IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 270 to 276 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KUNAL ORGANICS PVT. LTD.

Versus

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Appearance:

1. COMPANY PETITION No. 270 to 276 of 2000
MR PV NANAVATI for Petitioner No. 1
MR VIBHUTI NANAVATI for Petitioner No. 1
MS PJ DAVAWALA for Central Government.
OFFICIAL LIQUIDATIOR.

CORAM : MR.JUSTICE N.G.NANDI

Date of decision:07/12/2001

C.A.V.JUDGEMENT

1. All these Company Petitions relate to the amalgamation of the transferee company with the

transferor companies. Company Petition No.270 of 2000 is by Kunal Organics Pvt. Ltd. (Transferee Company), whereas Darshan Chem Inventa Pvt. Ltd., Nehal Polymer Pvt. Ltd., Keysons Chemtech Pvt. Ltd., Chirag Auxi Pharma Pvt. Ltd., Nicky Ploymer Pvt. Ltd. and Lekhadia Household Products Pvt. Ltd. (Transferor Companies) have filed Company Petitions Nos. 217 to 276 of 2000 respectively.

The prayer is that these transferor companies be amalgamated with the transferee company by sanctioning the proposed scheme of amalgamation.

2. Vide order dated 15.11.2000, all these petitions came to be admitted and advertised in local daily English as well as Gujarati newspapers and composite advertisement for all the transferor companies was also permitted by the said order. The notice in the official gazette was dispensed with and the notice was ordered to be issued to the Central Government. Notice was issued to the Official Liquidator requiring him to file the report, also permitting him to engage a Chartered Accountant out of the penal maintained by him.

3. Pursuant to the order dated 15.11.2000, the Director of the Transferee Company filed affidavit dated 20.1.2001 testifying to the effect that as per the order dated 15.11.2000, the petitioner company has published the composite advertisement for the transferor companies in the English daily newspaper "Times of India" Ahmedabad edition on 27.12.2000 (Anneuxre-A) and the said advertisement was also published in the Gujarati daily newspaper "Jansatta" Ahmedabad edition on 26.12.2000 (Annexure-B). Along with the affidavit, the citation of the advertisement in English as well as Gujarati have been produced at (Annexure-A & B). Nobody has come forward objecting to the scheme of amalgamation advertised in Annexure-A & B for amalgamation of the transferor companies with the transferee company.

4. In the petition, the transferee company has stated that the transferee company was incorporated on 12.2.1985 as a private limited company and that the books of account of the transferee company are audited every year and also audited as on 31.3.1999; that petitioner company is engaged in manufacturing and trading in textile auxiliaries; that in view of the recession in the textile industry, the operation of the company has stagnated and there is no scope for improved operations in the near future; that the Transferee company - Kunal Organics Pvt. Ltd. has commenced software division with

Kunal Infosys and the said division has been providing services in software and web related activities, and the transferee company needs resources to expand into software business; that the transferor companies and transferee company have Directors and shareholders from amongst one family; that neither the transferor companies nor the transferee company have no secured creditors or no liability or outstanding dues towards any bank and financial institutions; that the transferor companies have no liabilities towards trade creditors; that all these companies were involved in the business of textile auxiliaries and intend to diversify their business, the Board of Directors of these companies resolved that subject to such directions and sanction of the shareholders and creditors; and subject to directions and sanction of the appropriate court, as may be required in law, and subject to consent and direction of the Central Government and other Authorities, the scheme of amalgamation be made between the petitioner company and transferee company on the broad basis referred to in the scheme of amalgamation which is at Annexure-C; that respective Board of Directors of both the companies have approved the scheme of amalgamation and assets of both the combined units after amalgamation will be enough and sufficient to meet with all the liabilities, and proposed amalgamation will not adversely affect the creditors or class of creditors and will enable them to realize the dues in a normal manner; that the company does not have unsecured deposits from outsiders and most of the creditors are paid of till date and all of them given their written consent. That the sanctioning of the scheme of amalgamation is for the benefit of the petitioner - company and its members and also in the public interest.

5. The transferor companies in their petitions stated that the balance-sheet of the transferor companies are audited as on 31.3.1999; that the transferor companies are the companies engaged in the manufacturing of textile auxiliaries; that in view of the recession the business are almost standstill position in the textile industry, company has almost ceased to carry on sales and purchase. The management of the company is looking out for opportunities to diversity its business in future, and the petitioner company intends to commence software services business. That the Transferee company - Kunal Organics Pvt. Ltd. is also a private limited company engaged in the business of trading and manufacturing of textile auxiliaries as well as in software services business. The business of textile auxiliaries of transferee company has stagnated however it has already

commenced and entered into software services business. That as the transferor company is having surplus liquid cash and transferee company is already in business with transferor company is looking out and intending to carry on. Hence, the transferor company shall contribute the liquid cash and transferee company shall expand one of its branches of business in which it has interest. That the Directors and shareholders of the transferor company as well as transferee company are from amongst one family; that the transferor company and transferee company have no secured creditors or no liabilities or outstanding obligations towards any bank or financial institutions. Since all these companies were involved in the business of textile auxiliaries and intend to diversify their business, the Board of Directors of all these companies thought it fit to amalgamate them for pooling of resources and achieving business sygernic in the operations. The amalgamation would pool resources and making administration easy and streamline the control system more efficiently. The amalgamated company would be in a position to perform better through optimum utilization of the resources and minimizing the administrative and operative cost. Thus, the amalgamation would be to the mutual advantage of both the transferor companies and transferee company. Accordingly, Board of Directors of the Transferor company resolved that subject to such directions and sanction of the shareholders and creditors; and subject to such directions and sanction of the appropriate courts, as may be required in law, and subject to such consent and directions of the Central Government and other authorities as may be necessary, the scheme of amalgamation be made between the petitioner company and transferee company on the broad basis referred to herein as the scheme of amalgamation (Annexure-C). That the sanctioning of the scheme of amalgamation will be for the benefit of the transferor company and its members and creditors and also in the public interest.

6. Pursuant to the notice issued to the Central Government, Ms. P.J.Davawala learned Additional Standing Counsel for the Government of India appeared and has placed on record the communication dated 16.7.2001 signed by the Registrar of Companies, Gujarat in all the company petitions and accordingly, Ms. P.J.Davawala stated that Regional Director has no objection in granting relief of amalgamation of transferor companies with the transferee company as prayed in this group of petitions. Thus, the Central Government vide its communication dated 16.7.2001 has not objected to the sanctioning of the scheme of amalgamation of the transferor companies with the

transferee company as prayed in these group of petitions.

7. The Official Liquidator has filed his report pursuant to the order dated 15.11.2000.

It has been submitted by the learned Official Liquidator that before the scheme of amalgamation could be sanctioned, the filing of the audited balance-sheet upto 31.3.2000 and 31.3.2001 and filing of the report whether the affairs of the transferor companies have been conducted in a manner prejudicial to the interest of the transferor company is a must and that the petitioner company be directed to get the books of accounts of the company audited and then, scrutinized by the Chartered Accountant M/s. B.S.Shah and Co. appointed by the Official Liquidator. In this regard, the Official Liquidator has referred to second proviso to Section-394 of the Companies Act,1956.

It may be seen that as per draft scheme of amalgamation the effective date is 1.4.1999 as submitted by Mr. Nanavaty learned counsel for the petitioner. The audited balance-sheet upto 31.3.1999 has been placed on record and the proposed scheme of amalgamation has been approved by the Board of Directors of the Transferor companies as well as Transferee company.

8. It is submitted by Mr. Nanavaty learned counsel for the petitioner that the Chartered Accountant was appointed by the Official Liquidator on 23.3.2000. The report filed by the Official Liquidator is dated 16.10.2001 and there is delay in asking for the audited balance-sheet by the Official Liquidator. That the report of the Chartered Accountant does not suggest the requirement of the audited balance-sheet upto 31.3.2000. That the audited balance-sheet upto 31.3.2000 has not been asked for as there is nothing prejudicial and there are no creditors, and the deposits of the transferor companies are with the banks. That if there is any violation of statutory requirements then the action can be taken against the transferee company, but for that amalgamation cannot be refused. That nobody is going to suffer if the scheme of amalgamation is sanctioned and that there is no question of audited accounts of the transferor companies when the transferor companies are sought to be transferred with the transferee company and it would be the responsibility and liability of the transferee company from the date of amalgamation and that deemed date of amalgamation be fixed as 1.4.1999.

In the case of Marshall Sons and Co. (India)

Ltd. Vs. Income Tax Officer reported vide AIR 1977 SC 1763. It is observed in para.14 that, ".....If the Court so specifies a date, there is little doubt that such date of transfer. But where the Court does not prescribe any specific date but merely sanctions the scheme presented to it, it should follow that the date of amalgamation of transfer is the date specified in the scheme as "the transfer date". It cannot be otherwise. .... Where the Court did not prescribe any specific date or modified date from which the amalgamation of the companies was to take place as prescribed by the scheme of amalgamation but simply sanctioned the scheme of amalgamation as presented before it, the date of amalgamation would be the date specified in the scheme as transfer date and not the date on which the scheme was approved by the Court and where the scheme also provid that after the date of transfer, subsidiary company would be deemed to carrying over the business, on behalf of holding company, the notices by the Income-tax Officer to the subsidiary company under Section-139(2) and 142(1) to file return for the assessment year subsequent to the date of transfer would not be warranted in law....".

9. It is suggested from the record that all the shareholders and creditors of the company have consented to the scheme of amalgamation. It is also suggested that all the transferor companies though originally promoted for manufacturing and trading of the textile chemicals and auxiliaries, at present are engaged mainly in the activities of investments. The transferee company is engaged in the business of textile chemicals and computer software, and allied activities, the amalgamation would give the sygernic benefit to the amalgamated company. All the petitions give details of the advantages that would flow by virtue of amalgamation of the transferor companies.

10. All the equity shareholders of the transferor companies and transferee company have approved the scheme of amalgamation by written consents and there are no secured creditors in case of any transferor companies. That all the unsecured creditors of all the transferor companies had approved the scheme by written consent. These consent letters are on record along with the respective company petitions. Hence, the meetings of the shareholders and creditors of all the transferor companies were dispensed with vide order dated 6.11.2000, which are in the respective company petitions.

11. I am satisfied that the amalgamation would be in the interest of the transferor companies and its members.

Under the circumstances, the scheme of amalgamation (Annexure-A) is sanctioned. The prayer in terms of para.14(A) in case of transferee company in Company Petition No.270 of 2000 and prayer in terms of para.15(A) in Company Petition Nos. 271 to 276 of 2000 of the transferor companies are granted. These petitions are disposed of accordingly.

12. The cost of the Central Government to be paid to the counsel representing the Central Government in each of the petition is quantified at Rs.2500/-.

(N.G.Nandi,J.)

(vipul)